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IN THE

Supreme Court of the United States

October Term, 1970

No. ~~1685~~ 70-151

PROCEEDING No. 1

IN THE MATTER OF THE APPLICATION

OF

JOHN J. KRAEMER, individually and as President of Council 50, AFL-CIO, on behalf of himself and others similarly situated,

Petitioner,

for a judgment under Article 78 of the Civil Practice Law and Rules

against

PUBLIC EMPLOYMENT RELATIONS BOARD, OFFICE OF EMPLOYEE RELATIONS, COMPTROLLER OF THE STATE OF NEW YORK, and THE STATE OF NEW YORK, and the CIVIL SERVICE EMPLOYEES ASSOCIATION, INC.,

Respondents.

PROCEEDING No. 2

IN THE MATTER OF THE APPLICATION

OF

JOHN J. KRAEMER, individually and as President of Council 50, AFL-CIO, on behalf of himself and others similarly situated, and COUNCIL 50, AFL-CIO,

Petitioner,

for a judgment under Article 78 of the Civil Practice Law and Rules

against

OFFICE OF EMPLOYEE RELATIONS, COMPTROLLER OF THE STATE OF NEW YORK, and THE STATE OF NEW YORK, PUBLIC EMPLOYMENT RELATIONS BOARD and the CIVIL SERVICE EMPLOYEES ASSOCIATION, INC.,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE DIVISION OF THE SUPREME COURT OF THE STATE OF NEW YORK, THIRD JUDICIAL DEPARTMENT

WILLIAM GOFFEN,
150 Broadway,
New York, N. Y. 10038,
Counsel for Petitioner.

TABLE OF CONTENTS

	PAGE
Opinions Below	2
Jurisdiction	2
Questions Presented	3
Statutory Provisions Involved	3
Statement of the Case	4
Reasons for Granting the Writ	6
Conclusion	13
Appendix:	
Memorandum Decision of Supreme Court, County of Albany	A1
Opinion of Appellate Division, Third Department	A5
Order of Affirmance	A9
Statutes Involved	A11

Cases Cited

Bauch, Matter of, v. City of New York, 21 N. Y. 2d 599, cert. den. 393 U. S. 834	11, 12
Board of School Directors v. Wisconsin Employment Relations Board, 42 Wisc. 2d 637	7, 9
Brown v. Louisiana, 383 U. S. 131	6
Goldberg v. Kelly, 397 U. S. 254	6
Kraemer v. New York Thruway Authority, Appellate Division, Third Department, February 19, 1971	8

PAGE

Kraemer v. Office of Employee Relations, Justice A. Franklin Mahoney, Special Term, Albany County, New York (opinion of July 21, 1970) 10

Renken v. Compton City School District, 207 Cal. App. 2d 106 6

Rinaldi v. Yeager, 384 U. S. 305 6

Statutes Cited

Civil Service Law, Article 14 (Taylor Law):

Section 200 ..... 7, A11

Section 202 ..... 7, 9, A11

Section 209-a 6, 7, A12

Executive Law, Section 654 ..... 7, A13

Laws of 1970, Chapter 458, Section 9 ..... 7, A14

United States Constitution:

Amendment 1 ..... 11, A15

Amendment 14 ..... 4, 5, A15

New York Constitution, Article 1:

Section 6 ..... 4, 5, A15

Section 11 ..... 4, 5, A15

Authority Cited

The Privilege of Exclusive Recognition and Minority Union Rights in Public Employment, by J. W. Waks, 55 Cornell Law Review 1004 (July, 1970) 7

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Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE DIVISION OF THE SUPREME COURT OF THE STATE OF NEW YORK, THIRD JUDICIAL DEPARTMENT

The petitioner JOHN J. KRAEMER respectfully prays that a writ of certiorari issue with respect to Proceeding No. 1 above entitled to review the order of the Appellate Division of the Supreme Court of the State of New York, Third Judicial Department, entered in the above proceedings on December 14, 1970.

Opinions Below

The opinion of the Supreme Court of the State of New York at Special Term, Albany County, dismissing the petitions is reported at 63 Misc. 2d 708 and appears in the Appendix hereto. The opinion of the Appellate Division of the Supreme Court of the State of New York, Third Judicial Department, affirming the order of Special Term, is reported at 35 A. D. 2d 297 and appears in the Appendix hereto. The Court of Appeals of the State of New York dismissed the appeal taken as of right to that Court by order entered March 4, 1971 upon the ground that no substantial constitutional question is directly involved. The Court of Appeals denied a motion for permission to appeal on April 14, 1971 without opinion.

Jurisdiction

A timely motion in the Court of Appeals of the State of New York for permission to appeal to that Court from the order of the Supreme Court of the State of New York, Third Judicial Department, dated and entered on December 14, 1970, was denied by order dated and entered on

April 14, 1971, and this petition for certiorari was filed within ninety days of that date. This Court's jurisdiction is invoked under 28 U. S. C. Section 1257(3).

Questions Presented

Whether the grant of exclusive payroll deduction of insurance premiums by the State of New York to a majority union of public employees is constitutionally discriminatory as a denial of due process and of the equal protection of the laws to the members of a minority union of public employees.

Whether the State of New York as an employer is exempt from constitutional inhibitions requiring due process and equal protection because private employers are exempt from such inhibitions.

Statutory Provisions Involved

Civil Service Law, Article 14 (Taylor Law), Sections 200, 202, 209-a;
Executive Law, Section 654;
Laws of 1970, Chapter 458, Section 9;
United States Constitution, Amendments 1 and 14;
New York Constitution, Article 1, Section 6.

The pertinent text of the foregoing citations is set forth in the Appendix.

Statement of the Case

In January 1970 the State of New York included in a collective bargaining contract with Civil Service Employees Association, Inc. (CSEA) a clause extending the exclusive services of the State to CSEA in deducting membership dues and insurance premiums from salaries of consenting members of CSEA. The clause reads as follows:

> CSEA shall have exclusive payroll deduction of membership dues and insurance premiums with this privilege accorded to no other employee organization in the four units in which CSEA is certified.

The petitioner, Council 50, AFL-CIO, with 15,000 State employees comprising its membership sought in the above Proceedings to require the State to continue these services when requested by State employees whether or not they belong to CSEA. In Council 50's case, employees have had their membership dues deducted from their payrolls at their request for the past fourteen years. They have had their insurance premiums similarly deducted for the past seven years.

The petition in Proceeding No. 1 alleged that the extension of any exclusive privilege of deduction of insurance premiums "constitutes a deprivation of due process of law and of equal protection of the laws in violation of the United States Constitution, Amendment 14 and of the New York Constitution, Article 1, Sections 6 and 11" (Petition, par. 14).

The petition in Proceeding No. 2 (review of which is not sought by the instant petition) seeks to enjoin discontinu-

ance of the State's services in withholding employee membership dues at their request and remitting them to Council 50 and likewise raises constitutional questions as follows:

> The purported exercise of authority in extending exclusive check-off privileges to CSEA thereby depriving petitioner Council 50 AFL-CIO of such privileges, is arbitrary, capricious, discriminatory and unlawful and constitutes a deprivation of property without due process of law and of the equal protection of the laws in violation of the United States Constitution, Amendment 14, and of the New York Constitution, Article I, Sections 6 and 11. (Petition, par. 17)

Special Term apparently consolidated both proceedings and ruled:

> *Bauch* [*Matter of Bauch* v. *City of New York*, 21 N. Y. 2d 599, cert. den. 393 U. S. 834] is consistent with the policy of the State and the check-off as contracted for herein and such did not deprive the Council of due process or equal protection of the laws; so, too, *Bucho Holding Co.* v. *State Rent Commission*, 11 N. Y. 2d 469, 477, and, *Gleason* v. *Gleason*, 26 N. Y. 2d 28, 41.

The Appellate Division, in its opinion affirming Special Term's dismissal of the petitions, did not comment on the constitutional issues though they were argued in the briefs of the parties and orally. When an appeal was taken on constitutional grounds as of right to the Court of Appeals,

that Court after argument dismissed the appeal on the ground that "no substantial constitutional question is directly involved. See *Matter of Bauch* v. *City of New York*, 21 N. Y. 2d 599."

Reasons for Granting the Writ

Review by this Court of the present issues should be helpful to all states in the newly developing area of collective bargaining rights for public employees, an area in which the precedents of private industry are not relevant. Taylor Law, Civil Service Law, Section 209-a(3).

Proceeding No. 1 concerning which certiorari is sought, presents the issue whether the long existing services of the State of New York in withholding insurance premiums at the request of any public employees who wish to be covered by any employee organization insurance plan may be arbitrarily and summarily discontinued without any hearing whatsoever pursuant to a collective bargaining agreement extending the privilege solely to members of one employee organization. Such discriminatorily extended, exclusive services by the State are in conflict with restraints on the government of due process and equal treatment.

Goldberg v. *Kelly*, 397 U. S. 254;
Rinaldi v. *Yeager*, 384 U. S. 305;
Brown v. *Louisiana*, 383 U. S. 131;
Renken v. *Compton City School District*, 207 Cal. App. 2d 106;

Board of School Directors v. *Wisconsin Employment Relations Board*, 42 Wisc. 2d 637;

The Privilege of Exclusive Recognition and Minority Union Rights in Public Employment, by J. W. Waks, 55 Cornell Law Review 1004 (July, 1970).

The second proceeding protests the discriminatory restriction of long existing government services in withholding employee organization dues to members of a single organization as likewise violating due process and equal protection concepts. However, the instant petition does not seek review of Proceeding No. 2.

The concept of "exclusive recognition" is at the basis of the State's extension of exclusive premium deduction services. The concept may just as logically yet be extended by the State so as to limit employee withholding for United States savings bond purchases or community chest donations to members of a particular union.

The statutory policy of the State of New York with respect to collective bargaining by public employees is expressed in the Taylor Law (Civil Service Law, Sections 200 et seq., effective September 1, 1967). The statutory scheme of this statute is inconsistent with the concept of exclusive insurance premium deductions. Civil Service Law, Sections 200, 202, 209-a. All other New York legislation relating to insurance premium withholding in public employment is expressly made subject to the provisions of the Taylor Law. Executive Law, Section 654, the Laws of 1970, Chapter 458, Section 9.

There is a difference between the insurance programs offered by CSEA and those of Council 50. In CSEA's case, the insurance is carried by a private carrier (Travelers Insurance Company). The State accommodates the private carrier by issuing a check to it directly for premiums withheld. The State issues a separate check for dues.

Council 50 administers its own insurance plan. Therefore, the State issues one check to Council 50 for both dues and insurance, and the proceeds of the check are allocated by Council 50. The savings resulting from self administration of Council 50's insurance permit it to offer less expensive coverage than Travelers Insurance Company and, also, to impose no contestability period.

The instant decisions create the anomaly of judicial sanction of State accommodation of a private company while denying comparable services to public employees.

The discontinuance of premium and dues deductions creates irreparable injury. There is no way that such deductions may be made retroactively. By way of specific example, in another case pending in New York, *Kraemer* v. *New York State Thruway Authority,* the Appellate Division, Third Department, on February 19, 1971, granted a stay of discontinuance of deductions of insurance premiums and dues after the Thruway Authority, pursuant to a contract provision similar to the one presently at issue, had already interrupted this long standing practice. During the period of interruption, four employees of the Thruway died leaving their families without Council 50 provided life

insurance amounting to $12,000 in the aggregate. It was only Council 50's voluntary disregard of the default in premiums that led to payment of the lapsed policies.

In the *Board of School Directors* case, *supra*, the Wisconsin Court considered a statute which is like New York's Taylor Law in that it protects the right of public employees to form, join and participate in the employee organization of their choice. Civil Service Law, Section 202. That Court quoted approvingly from a ruling of the Wisconsin Employment Relations Commission:

> Those rights or benefits which are granted exclusively to the majority representative, and thus denied to minority organizations, must in some rational manner be related to the functions of the majority organization in its representative capacity, and must not be granted to entrench such organization as the bargaining representative.

The State's extension of exclusive premium deduction services to a majority union is not justifiable as a legitimate enhancement of union security in the public sector. The denial of premium deduction facilities to members of a smaller union neither adds to the security of the majority union nor stabilizes collective bargaining (unless entrenchment of the majority union so that it may never be overturned may be regarded as "stabilization").

Special Term in the instant case did not distinguish between "exclusive recognition" of the majority union as

bargaining agent for all of the employees in a bargaining unit, whether or not they belonged to the majority union, and the extension of benefits exclusively to members of the majority union when the effect is not to stabilize a bargaining relationship, but merely to entrench the majority union.

The Wisconsin Court evidently recognizes that the exclusive status of the certified union for the purposes of bargaining and executing an agreement with the public employer may not deprive an individual employee or a minority employee organization of constitutional guarantees.

Contrasting with the perceptive views of the Wisconsin Court, *supra,* the Courts and agencies of the State of New York have construed the Court decisions in the present cases as authorizing "exclusive recognition" of certified employee organizations in areas going even beyond employee organization premium and dues collections. Thus, in *Kraemer* v. *Office of Employee Relations,* Justice A. Franklin Mahoney at Special Term, Albany County, New York (opinion of July 21, 1970) sustained a provision of the present collective bargaining contracts limiting to CSEA exclusively the right to represent public employees who desire to petition the State for redress of employee grievances. It is certainly apparent that this extension of the concept of "exclusivity" as a guide to public employee rights may present serious questions under the First

Amendment of the United States Constitution with respect to the right to petition the government for redress of grievances.

The concept of "exclusive recognition" expressed by Special Term's opinion in the instant case has been seized upon by State agencies as authorization for a still further extension of exclusive privileges to members of CSEA only. For example, a memorandum dated March 9, 1971 from the Division of Employment of the State of New York to State employees advises:

> The negotiated agreements between the State and the Civil Service Employees Association grant to CSEA *exclusive* access during working hours to employees . . .

Certainly such pronouncement raises serious questions as to infringement of the First Amendment privilege of freedom of speech.

More recently, as an administrative extension of the judicial holding as to "exclusivity" in the present case, State agencies have been barring members of Council 50 from holding meetings or conducting lecture courses in State auditoriums or using the bulletin boards. This kind of discrimination may well conflict with the equal protection guarantee of the Fourteenth Amendment.

Special Term and the Appellate Division both cited *Matter of Bauch* v. *City of New York*, 21 N. Y. 2d 599, cert. den. 393 U. S. 834. The Court of Appeals also cited

Bauch in support of its brief statement dismissing the appeal on the ground that no substantial constitutional question is directly involved.

The *Bauch* case held that check-off by the City of New York on behalf of members of the majority union exclusively did not violate due process or equal protection guarantees because the practice is common in private industry. Yet, the private employer, unlike the State as employer, is not restrained by constitutional inhibitions from depriving employees of his services or from extending them to certain employees and not to others.

The notion that the government as employer is free of constitutional restraints in its collective bargaining relationships because private employers may be is actually extended by the present case beyond the holding of the *Bauch* case which was limited to the question of the right of the City of New York to grant exclusive check-off of union dues to a majority union, thereby discontinuing a long established practice of checking-off dues at employee requests to any union designated. That case did not involve the withholding of insurance premiums at all. Nevertheless, the three State Courts in deciding the present case all cite *Bauch* as though it also authorized exclusive services of the State in withholding insurance premiums. This expansion of the concept of *Bauch* is apparently based upon Special Term's holding that a public employer may "award exclusive recognition to the employee organization certified as the winner of a collective bargaining election."

As the result of Justice John M. Harlan's denial of applications for stays, check off of dues (including insurance premiums) has now been terminated, thereby burdening the membership of Council 50 with premium collection, bookkeeping and other expenses affecting adversely the soundness of the actuarial plan, as well as opening the door to premium defaults and lapse of insurance coverage to the detriment of 15,000 State employees.

CONCLUSION

For these reasons a writ of certiorari should issue to review the order and opinion of the Appellate Division of the Supreme Court of the State of New York, Third Department, insofar as it applies to Proceeding No. 1.

Respectfully submitted,

WILLIAM GOFFEN,
150 Broadway,
New York, N. Y. 10038,
Counsel for Petitioner.

Dated: New York, N. Y.
May 7, 1971.

APPENDIX

Memorandum Decision of Supreme Court, County of Albany

STATE OF NEW YORK SUPREME COURT

COUNTY OF ALBANY

No.

PROCEEDING No. 1

IN THE MATTER OF THE APPLICATION

OF

JOHN J. KRAEMER, individually and as President of Council 50, AFL-CIO, on behalf of himself and others similarly situated,

Petitioner,

for a judgment under Article 78 of the Civil Practice Law and Rules

against

PUBLIC EMPLOYMENT RELATIONS BOARD, OFFICE OF EMPLOYEE RELATIONS, COMPTROLLER OF THE STATE OF NEW YORK, and THE STATE OF NEW YORK,

Respondents,

CIVIL SERVICE EMPLOYEES ASSOCIATION, INC.,

Intervenor-Respondent.

PROCEEDING No. 2

IN THE MATTER OF THE APPLICATION

OF

JOHN J. KRAEMER, individually and as President of Council 50, AFL-CIO, on behalf of himself and others similarly situated, and COUNCIL 50, AFL-CIO,

Petitioner,

for a judgment under Article 78 of the Civil Practice Law and Rules

against

OFFICE OF EMPLOYEE RELATIONS, COMPTROLLER OF THE STATE OF NEW YORK, PUBLIC EMPLOYMENT RELATIONS BOARD and THE STATE OF NEW YORK,

Respondents,

CIVIL SERVICE EMPLOYEES ASSOCIATION, INC.,

Intervenor-Respondent.

Memorandum Decision of Supreme Court, County of Albany

At Albany County Special Term, Albany, New York, May 22, 1970; No. 10.

APPEARANCES:

For the application:

WILLIAM GOFFEN, ESQ.
Attorney for Petitioner

In opposition:

LOUIS J. LEFKOWITZ, ESQ.
Attorney General of the State of New York, for the respondents.

DEGRAFF, FOY, CONWAY AND HOLT-HARRIS, ESQS.
Attorneys for Civil Service Employees Association, Inc. Intervenor-Respondent.

HUNT, J.

The petitioner in these two article 78 proceedings seeks to void part of each of the four collective bargaining agreements (effective April 1, 1970) entered into by the Office of Employee Relations (OER) for the State and the Civil Service Employees Association (CSEA) as the bargaining representative for the four units in which the latter was certified and to obtain a determination that Council 50 shall continue to have the privilege of the check-off of dues of its members.

The part in each contract to which objection is taken relates to "payroll deductions" and thereunder CSEA is granted "exclusive payroll deduction of membership dues and insurance premiums for employees and no other employee organization shall be accorded any such payroll deduction privileges."

BEST AVAILABLE COPY

Memorandum Decision of Supreme Court, County of Albany

Council 50 represents a minority of State employees, including a number in units for which CSEA is the exclusive representative, and complains that the result of the exclusivity provision is to prohibit the State Comptroller from continuing to deduct from the payroll checks of its members amounts for (1) insurance premiums (first proceeding) and (2) dues (second proceeding).

It appears that the Comptroller has never deducted insurance premiums, as such, but, has deducted members' dues and remitted to the Council. The latter has turned over part of the dues to an insurance fund set up by the Council and the balance was retained by it for its general purposes.

The second proceeding, like the first, seeks to void the exclusivity provision and to compel the Comptroller to continue payroll deductions of dues of its members.

The issue is over the authority of OER to enter into the exclusivity agreement with CSEA and to direct the Comptroller to end the deduction of dues from the payroll checks of Council 50 members.

It is no longer open to question that as the result of an election to determine a bargaining agent, an employer may award exclusive recognition to the employee organization certified as the winner and may make and execute written agreements with the latter. Such was done here and OER had the authority to contract with CSEA for exclusivity and the Comptroller is required to honor the contract and direction of OER as it affects him and his prior and future practices (*Executive Law*, section 654; *State Finance Law*, section 6-a.2; *Civil Service Law*, section 203; *Matter of Bauch* v. *City of New York*, 21 N. Y. 2d 599, cert. den. 393 U. S. 834). *Bauch* is consistent with

the policy of the State and the check-off as contracted for herein and such did not deprive the Council of due process or equal protection of the laws; so, too, *Bucho Holding Co.* v. *State Rent Commission,* 11 N Y 2d 469, 477, and, *Gleason* v. *Gleason,* 26 N Y 2d 28, 41.

Relief is not sought against PERB and the petitions in this respect are dismissed. The objections in point of law on behalf of OER are sustained. The petitions are dismissed. The papers may be obtained at Chambers. The Attorney General to submit orders.

Dated: Albany, New York
July 15, 1970

RUSSELL G. HUNT
Justice of Supreme Court

Opinion of Appellate Division, Third Department

#15903

STATE OF NEW YORK SUPREME COURT

APPELLATE DIVISION—THIRD DEPARTMENT

In the Matter

of

JOHN J. KRAEMER, Individually, and as President of Council 50, AFL-CIO,

Appellant,

against

ROBERT D. HELSBY *et al.*, Constituting the Public Employment Relations Board, *et al.*,

Respondents,

CIVIL SERVICE EMPLOYEES ASSOCIATION, INC.,

Intervenor-Respondent.

(And 1 Other Proceeding.)

Argued, October 21, 1970.

Before:

HON. J. CLARENCE HERLIHY,
Presiding Justice,

HON. WALTER B. REYNOLDS,
HON. LOUIS M. GREENBLOTT,
HON. LAWRENCE H. COOKE,
HON. MICHAEL E. SWEENEY,
Associate Justices.

Opinion of Appellate Division, Third Department

APPEALS from a judgment of the Supreme Court at Special Term (Russell G. Hunt, J.) entered July 22, 1970 in Albany County, which dismissed petitioner's applications in proceedings under CPLR article 78 to enjoin the Comptroller of the State of New York from discontinuing the practice of check-off of union dues and of deducting insurance premiums from the pay of members of Council 50, AFL-CIO.

WILLIAM GOFFEN, for appellant, 150 Broadway, New York, New York.

LOUIS J. LEFKOWITZ, Attorney General (Ruth Kessler Toch and John Q. Driscoll, of counsel) for respondents, The Capitol, Albany, New York.

DE GRAFF, FOY, CONWAY & HOLT-HARRIS (James W. Roemer, Jr., of counsel) for intervenor-respondent, 90 State Street, Albany, New York.

OPINION FOR AFFIRMANCE

GREENBLOTT, J.

These are appeals from a judgment of the Supreme Court at Special Term, entered July 22, 1970 in Albany County, which dismissed petitioner's applications in proceedings under CPLR article 78 to enjoin the Comptroller of the State of New York from discontinuing the practice of check-off of union dues and of deducting insurance premiums from the pay of members of Council 50, AFL-CIO.

In 1969 the Public Employment Relations Board (PERB) conducted elections for State employees represented in five units, resulting in the certification of the

Civil Service Employees Association (CSEA) as the exclusive bargaining agent for all employees in four of those units. Pursuant to article XIV of the Civil Service Law (the Taylor Law) four contracts were negotiated which provided that CSEA should have exclusive payroll deduction of membership dues and insurance premiums for employees, and no other employee organization shall be accorded such privileges. Appellant thereupon instituted these proceedings to enjoin the Comptroller from refusing to make such deductions on behalf of Council 50.

Section 654 of the Executive Law authorizes the Director of the Office of Employee Relations to instruct a State officer, department, board, commission or agency to take such action as needed to implement and administer the provisions of a binding agreement between the State and a duly certified and recognized employee organization. This authority extends both to insurance deductions (L. 1970, ch. 459, §9), and check-off of employee association dues (State Finance Law, §6-a [2]). These statutes clearly indicate that as to a nonrecognized, noncertified, employee association, dues and insurance check-offs are not a vested right (Civil Service Law, §208), but are a privilege which may be withheld at the discretion of the Director of Employee Relations. "Whatever discretion a public employer may have, under the act, to grant the check-off to a minority union not recognized as a bargaining agent * * * the employer is plainly under no obligation to do so." (*Matter of Bauch* v. *City of New York*, 21 N Y 2d 599, 606).

Appellant's contention that the grant of exclusive privileges constitutes employer interference with the administration of an employee organization in contravention of subdivision 1 (b) of section 209-a of the Civil Service

Law, is unfounded. The use of a check-off or deduction system is a time-tested method of implementing union security and in no way interferes with an employee's right to associate with a minority union which is still free to collect dues or premiums by other means.

Since a public employer may make its grant of check-off privileges exclusive to the majority union (*Matter of Bauch* v. *City of New York, supra*), the Director of Employee Relations properly terminated the exercise of check-off privileges by appellant.

The judgment should be affirmed, without costs.

Order of Affirmance

At a Term of the Appellate Division of the Supreme Court, Third Judicial Department, held at the Court House in the City of Albany, New York, commencing on the 19th day of October, 1970.

Present:

HON. J. CLARENCE HERLIHY,
Presiding Justice

HON. WALTER B. REYNOLDS,
HON. LOUIS M. GREENBLOTT,
HON. LAWRENCE H. COOKE,
HON. MICHAEL E. SWEENEY,
Associate Justices.

[SAME TITLES]

The above-named appellant having appealed to the Appellate Division of the Supreme Court, Third Judicial Department, from a judgment of the Supreme Court, Albany County, at Special Term, in proceedings under CPLR Article 78 dismissing petitioner's applications to enjoin the Comptroller of the State of New York from discontinuing the practice of check-off of union dues and of deducting insurance premiums from the pay of members of Council 50, AFL-CIO, which judgment was entered on the 22nd day of July, 1970, in the office of the Clerk of Albany County.

And the said appeals having been argued by William Goffen, Esq., attorney for appellant, by John Q. Driscoll,

Order of Affirmance

Assistant Attorney General, of counsel for respondents and by James W. Roemer, Jr., Esq., of counsel for the intervenor-respondent, and after due deliberation the Court having rendered a decision on the 7th day of December, 1970 (Opinion by Greenblott, J.), it is hereby

ORDERED that the judgment appealed from be and the same hereby is affirmed, without costs.

Enter:

/s/ JOHN J. O'BRIEN
Clerk

Dated and Entered: December 14, 1970

A true copy

JOHN J. O'BRIEN
Clerk

(Seal)

Statutes Involved

Civil Service Law, Article 14 (Taylor Law)

Sec. 200. *Statement of policy*

The legislature of the state of New York declares that it is the public policy of the state and the purpose of this act to promote harmonious and cooperative relationships between government and its employees and to protect the public by assuring, at all times, the orderly and uninterrupted operations and functions of government. These policies are best effectuated by (a) granting to public employees the right of organization and representation, (b) requiring the state, local governments and other political subdivisions to negotiate with, and enter into written agreements with employee organizations representing public employees which have been certified or recognized, (c) encouraging such public employers and such employee organizations to agree upon procedures for resolving disputes, (d) creating a public employment relations board to assist in resolving disputes between public employees and public employers, and (e) continuing the prohibition against strikes by public employees and providing remedies for violations of such prohibition.

Sec. 202. *Right of organization*

Public employees shall have the right to form, join and participate in, or to refrain from forming, joining, or participating in, any employee organization of their own choosing.

Statutes Involved

Section 209-a. *Improper employer practices; improper employee organization practices; application*

1. Improper employer practices. It shall be an improper practice for a public employer or its agents deliberately (a) to interfere with, restrain or coerce public employees in the exercise of their rights guaranteed in section two hundred two for the purpose of depriving them of such right; (b) to dominate or interfere with the formation or administration of any employee organization for the purpose of depriving them of such rights; (c) to discriminate against any employee for the purpose of encouraging or discouraging membership in, or participation in the activities of, any employee organization; or (d) to refuse to negotiate in good faith with the duly recognized or certified representatives of its public employees.

2. Improper employee organization practices. It shall be an improper practice for an employee organization or its agents deliberately (a) to interfere with, restrain or coerce public employees in the exercise of the rights granted in section two hundred two, or to cause, or attempt to cause, a public employer to do so; or (b) to refuse to negotiate collectively in good faith with a public employer, provided it is the duly recognized or certified representative of the employees of such employer.

3. Application. In applying this section, fundamental distinctions between private and public employment shall be recognized, and no body of federal or state law applicable wholly or in part to private employment, shall be regarded as binding or controlling precedent.

Statutes Involved

Executive Law §654

§654. *Actions by other officers, departments, boards, commissions or agencies*

a. Notwithstanding any inconsistent provision of law, any state officer, department, board, commission or agency, shall, upon written request from the director, take such administrative or other action as is necessary to implement and administer the provisions of any binding agreement between the state and one or more employee organizations representing state employees pursuant to the public employees' fair employment act, as amended. Such action may include, without limitation, the adoption, repeal or amendment of rules, regulations or other procedures. Without prejudice to the rights of an employee organization under such agreement, the opinion of the attorney general shall be conclusive in resolving any disagreement between the director and any such officer, department, board, commission or agency regarding any legal question arising out of such a request, including, without limitation, whether the agreement is binding, whether compliance with the request is necessary to implement or administer the agreement and whether compliance with the request is legally possible.

b. All state officers, departments, boards, commissions and agencies are authorized and directed to provide such other and further assistance, services and data as may be necessary to allow the director properly to carry out his functions, powers and duties.

Statutes Involved

Laws of 1970, Chapter 458, §9

§9. Section three of chapter five hundred eighty of the laws of nineteen hundred thirty-eight, entitled "An act to amend the insurance law, in relation to the definition of group life insurance," as last amended by chapter six hundred thirty-two of the laws of nineteen hundred sixty-four, is hereby amended to read as follows:

§3. The comptroller is hereby authorized to deduct from the salary of any employee of the state such amount as such employee may specify in writing filed with the comptroller for the payment of insurance premiums written on the group plan *or a group life insurance policy issued to a duly organized association of civil service employees pursuant to paragraph (f) of subdivision one of section two hundred four of the insurance law* and to transmit the sums so deducted to the company carrying such insurance. Any such written authorization may be withdrawn by such employee at any time upon filing written notice of such withdrawal with the comptroller. *The foregoing notwithstanding, and subject to the provisions of article fourteen of the civil service law, such deductions and transmittals shall be terminated as to one or more such associations or organizations in accordance with the written directions of the director of employee relations, not more than thirty days after receipt by the comptroller of such directions. The deductions and transmittals which were the subject of such directions shall not thereafter be resumed without the written approval of such director.* (Italics indicates material added.)

Statutes Involved

United States Constitution, Amendment 1

Congress shall make no law . . . abridging the freedom of speech . . . or the right of the people peaceably to assemble, and to petition the Government for redress of grievances.

United States Constitution, Amendment 14, Section 1

. . . nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

New York Constitution, Article 1, Section 6

* * *

No person shall be deprived of life, liberty or property without due process of law.

Section 11

No person shall be denied the equal protection of the laws of this State or any subdivision thereof.